No. 98.
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Supreme Court of the United States.

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No. 98.

SAMUEL MONROE ET AL., TRADING AS MONROE AND RICHARDSON,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANTS.

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STATEMENT.

This was a suit brought in the Court of Claims by the appellants to recover for losses resulting to them by reason of the abrogation of a contract with the United States.

The facts out of which the claim arose were as follows:

About the 25th of May, 1892, Capt. W. L. Marshall, of the United States Corps of Engineers, then stationed in Chicago, advertised for proposals for the construction of a canal known as the Illinois and Mississippi canal. Bids, which were required to be made on certain blank forms furnished by the

engineer's office and accompanied by the usual bond, were submitted by the appellants in due time, and were opened June 25, 1892. The bid of the appellants, being the lowest, after being referred to the Chief of Engineers and considered by him, was accepted by Captain Marshall, and a formal written or printed contract furnished to Captain Marshall by the Chief of Engineers was duly executed by the appellants and Captain Marshall, signed in accordance with all the requirements of section 3744 of the Revised Statutes, on or about the 27th of July, 1892 (Contract, R., pp. 4–7).

Immediately thereafter, on the 1st of August, the appellants commenced work and prosecuted the same until the 6th of August, when they were notified to cease work, and their contract was abrogated. The alleged reason for this abrogation of their contract was that the said written contract had not been actually approved in writing before the 1st of August, 1892, on which date the act of August 1, 1892 (27 Statutes, 340), went into effect, prohibiting a contractor requiring more than eight hours' work in any calendar day from his workmen, and for the reason that said formal contract did not have that provision in it, although made before the 1st of August, 1892, the Chief of Engineers did not consider himself empowered to indorse the word "Approved" on said contract after August 1, 1892, and thereupon returned it to Captain Marshall unindorsed.

The work was then readvertised and let to other bidders. The claimants brought this suit to recover the amount of money expended by them in the prosecution of the work they did perform and the loss of the profits that would have accrued to them if they had performed the entire contract.

The Court of Claims in its finding of facts found that the claimants expended $678.21 in the prosecution of the work, and would have received $7,150 profit on the work had they been permitted to perform it, making an aggregate loss to them of $7,828.21, but found as a conclusion of law that the failure of the Chief of Engineers to write upon the con-

tract the word "Approved" rendered it invalid, and thereupon dismissed the claimants' petition.

ASSIGNMENT OF ERRORS.

I. The court erred in holding as a matter of law that the contract was invalid by reason of the failure of the Chief of Engineers to formally approve the same.

II. The court erred in holding that the contract between the United States and the appellants, executed on or about the 19th day of July, 1892, and signed at the end thereof by W. L. Marshall, captain of the Corps of Engineers, in behalf of the United States, and the appellants, set out on pages 4, 5, 6, and 7 of Record, was not a valid, binding contract upon the United States.

BRIEF.

There is but one question involved in this suit, and that a narrow one, to wit, whether or not a contract entered into after due advertisement, under competitive bidding, after the bids had been submitted to the Chief of Engineers, after an examination and some correspondence relative to the bid with the contracting officer, and a written direction to him to accept the bid of the appellants, his acceptance of their bid, the preparation of the formal contract on a blank furnished by the Chief of Engineers, its execution by both the contracting officer and the claimants, in due form and in strict accordance with the provision of section 3744 of Revised Statutes, is to be deemed a binding contract upon the United States, because the Chief of Engineers failed to write upon it the word "Approved."

The learned court below held that this was a fatal defect in the contract, and in this we respectfully submit the court erred.

Aside from the provision of section 3744 relating to the making of contracts by the United States, there could be no question but that the advertisement, the proposals, and the acceptance constituted a valid contract. This court has so held in many cases, and particularly in the case of Garfielde *vs.* The United States, arising under a contract between the Post Office Department and Garfielde, which contracts are not embraced in the terms of the above section (93 U. S., 242).

And while this court has held in Clark's case (95 U. S., 539) that a signature at the *end of a contract* is mandatory and necessary to make it valid, it would be carrying the doctrine beyond the terms of section 3744 to hold that not only must the officer making the contract sign it *at the end thereof*, but also that the approving officer must write "Approved" and sign that at the *end thereof*.

The officer "appointed to make this contract" was Capt. W. L. Marshall. He reduced it to writing and signed it at the *end thereof*, and permitted the appellants to go to work under its provisions and continue work for six days; in fact, the contract itself provides that work shall commence on the first day of August, 1892, and in the event that the appellants failed to commence work on that day the captain of engineers reserved the power to annul the contract (R., p. 6). There was nothing in the advertisement, in the bid, or in the proposal or in the acceptance of the bid that required an approval by the Chief of Engineers, and there is certainly nothing in the record anywhere that requires the approval to be made in any particular form.

In the case of The United States *vs.* Speed (8th Wallace, 75 U. S., p. 77), the court, in passing upon the question of approval of a contract by the Commissary General, and in disposing of the objection that that contract was not approved by the Commissary General, says:

"We are of opinion that, taking this altogether, it is a finding by the court, as a question of fact (*i. e.*, an expression

from the Commissary General to his subordinate of his satisfaction at the progress made in the work) that the contract was approved by that officer; and inasmuch as neither the instrument itself, nor any ruling of law prescribes the mode in which this approval shall be evidenced, that a jury would have been justified in finding as the court did."

In this case, after the bids were submitted, Captain Marshall forwarded them to the Chief of Engineers, with the recommendation that the bid of the appellants for certain portions of the work be accepted (Finding 3, p. 9). The Chief of Engineers returned them to Captain Marshall, authorizing him to accept the appellants' bid for a part of the work, which he recommended be awarded to them, and wanting to know why another part of the work was not let to another bidder, who was apparently lower than the appellants. Captain Marshall returned the communication with the information that all the items awarded to Monroe & Richardson were by the advertisement required to go together, and they being the lowest bidders on all the items their bid could not be segregated and part of it awarded to another bidder. The Chief of Engineers thereupon returned that communication to Captain Marshall and directed him to accept the appellants' bid for the whole of their bid, and thereupon furnished him with the form of contract to be executed by them, which form was strictly followed.

If these facts do not constitute an approval by the Chief of Engineers of this contract, it is difficult to imagine what would. It must be borne in mind that a written paper is only the evidence of a contract. The contract was made before the written paper. In the language of the statute, it was reduced to writing. It existed before its reduction to writing, and as it existed it was approved.

After it was reduced to writing the Chief of Engineers was only concerned to see that it corresponded with his already given approval.

The learned Chief Justice in his opinion says:

"That the Chief of Engineers unequivocally disapproved the contract." The findings do not show such action. The Chief of Engineers conceived himself forbidden to act on the paper by reason of the act of August 1, 1892. He did not suggest that the terms of the act of August 1, 1892, should be incorporated in the contract, nor did he give the appellants an opportunity to insert that proviso, but "abrogated" it. If he abrogated a contract, it must have existed.

In the sixth finding the court distinctly finds that "their *contract was abrogated* against their consent, and the work they had *contracted to do* readvertised." If that state of facts existed, as the findings show, there must have been a contract.

In any view of the case, it is respectfully submitted that the court erred in failing to treat the contract sued on as a valid instrument.

The judgment of the court should be reversed, and judgment ordered to be entered in favor of the appellants in the sum of $7,828.21, as damages assessed by the Court of Claims.

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